United Nations S/PV.7829

Security Council

Seventy-first year

Provisional

7829th meeting

Thursday, 8 December 2016, 10 a.m.

New York

President:	Mr. González de Linares Palou	(Spain)
Members:	Angola	Mr. Lucas
	China	Mr. Li Yongsheng
	Egypt	Mr. Kandeel
	France	Mr. Stehelin
	Japan	Mr. Akahori
	Malaysia	Mr. Ibrahim
	New Zealand	Mr. Van Bohemen
	Russian Federation	Mr. Zagaynov
	Senegal	Mr. Ciss
	Ukraine	Mr. Yelchenko
	United Kingdom of Great Britain and Northern Ireland	Ms. Mulvein
	United States of America	Ms. Coleman
	Uruguay	Mr. Rosselli
	Venezuela (Bolivarian Republic of)	Mr. Medina Mejias

Agenda

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and OtherSerious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

Letter dated 1 August 2016 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2016/669)

This record contains the text of speeches delivered in English and of the translation of speeches delivered in other languages. The final text will be printed in the *Official Records of the Security Council. Corrections* should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-0506 (verbatimrecords@un.org). Corrected records will be reissued electronically on the Official Document System of the United Nations (http://documents.un.org).

16-42328 (E)

Accessible document Please recycle

Report of the International Tribunal for the Former Yugoslavia (S/2016/670)

Letter dated 17 November 2016 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2016/975)

Letter dated 17 November 2016 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council (S/2016/976)

The meeting was called to order at 10.05 a.m.

Adoption of the agenda

The agenda was adopted.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

Letter dated 1 August 2016 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2016/669)

Report of the International Tribunal for the Former Yugoslavia (S/2016/670)

Letter dated 17 November 2016 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2016/975)

Letter dated 17 November 2016 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council (S/2016/976)

The President (*spoke in Spanish*): In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia to participate in this meeting.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite the following briefers to participate in this meeting: Judge Carmel Agius, President of the International Tribunal for the Former Yugoslavia; Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals; and Mr. Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia and Prosecutor of the International Residual Mechanism for Criminal Tribunals.

The Security Council will now begin its consideration of the item on its agenda.

I wish to draw the attention of Council members to document S/2016/669, which contains the text of a letter dated 1 August 2016 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council. I also wish to draw the attention of members to document S/2016/670, which contains the report of the International Tribunal for the Former Yugoslavia. I furthermore wish to draw the attention of Council members to document S/2016/975, which contains the text of a letter dated 17 November 2016 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council. And, finally, I wish to draw members' attention to document S/2016/976, which contains the text of a letter dated 17 November 2016 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council.

I now give the floor to Judge Agius.

Judge Agius (*spoke in Spanish*): I should like to begin by expressing my sincere congratulations to you, Sir, on your country's assumption of the presidency of the Council for December. Your country is known for its tireless support for international justice and was, as a member of the Security Council in 1993, an indispensable force in the creation of the Tribunal.

(*spoke in English*)

I take this opportunity to thank you, Sir, and your country, along with Angola, Malaysia, New Zealand and Venezuela — all outgoing members of this body — for their resolute support to the Tribunal. At the same time, I warmly welcome the incoming Security Council members, which will see the Tribunal through to the end of its mandate. I look forward to working with them during 2017. I should also like to thank the Informal Working Group chaired by Uruguay, as well as the Office of Legal Affairs.

On behalf of all the judges and staff members of the International Tribunal for the Former Yugoslavia (ICTY), I wish to commend the Security Council for its prompt reaction to the Tribunal's urgent request concerning the composition of the Appeals Chamber. Resolution 2306 (2016), which amended the statute of the Tribunal, was not only adopted in a very short period of time, but it also demonstrated the Council's readiness and commitment to support the Tribunal.

The completion strategy report (see S/2016/976) before the Council demonstrates that the Tribunal has continued to work vigorously and diligently since its last report (see S/2016/454). With only one trial, one appeal and one contempt case remaining, the Tribunal's mandate is nearly complete, although it is not over and we shall face some formidable challenges in the coming year. It will be noted that, during the current reporting period, the *Prosecutor v. Mićo Stanišić and Stojan Župljanin* appeal was delivered, and I can confirm that we are still on track to deliver judgements in both the *Prosecutor v. Ratko Mladić* trial and the *Prosecutor v. Prlić et al.* appeal by November 2017. In addition, proceedings in the trial case of *Prosecutor v. Goran Hadžić* were terminated following the death of the accused.

The Tribunal's ongoing progress is due to the relentless efforts of all staff and judges, to whom I express my heartfelt thanks for their outstanding work and dedication. In the light of the projected completion dates of these cases, I have recently submitted a request for a final extension of the terms of office of the Judges. I use the term "final" precisely because I am confident that the Tribunal will close its doors at the end of 2017. I remain hopeful that this request will be favourably considered by the Security Council.

Council members will also find that the aforementioned report contains a special section on the Office of Internal Oversight Services (OIOS) evaluation, and in accordance with resolution 2256 (2015) sets out the Tribunal's implementation of the OIOS recommendations. I wish to assure all Security Council members that the Tribunal took the evaluation and recommendations very seriously. Everything that could feasibly and appropriately be done was done, bearing in mind our mutual interest that the Tribunal should stay on course to complete all its judicial work by 30 November 2017. The Tribunal's best efforts must therefore be measured against the context and purpose of that important commitment.

I draw attention to OIOS's third recommendation, which the Tribunal has partially implemented. A code of professional conduct for the judges of the Tribunal was adopted unanimously at the plenary of judges, held on 6 July, with immediate effect. In relation to a disciplinary mechanism, the Tribunal did not implement that recommendation, bearing in mind the lack of time and resources, although the judges considered it to be desirable. ICTY judges know that they are not above the law and that they are custodians of the justice system and ought to be held accountable for any breach of their ethical or professional duties. Our report also identifies the lack of a disciplinary mechanism as a systemic issue that affects other courts and tribunals and a wide number of United Nations high-level and non-staff officials. The Tribunal therefore suggests that the General Assembly address this more comprehensively at an organizational level.

Overall, the OIOS evaluation was a valuable experience. However, the Tribunal regrets that it was carried out at the very end of its lifespan and that, as a result, it was not possible to implement certain recommendations. Further, the OIOS evaluation focused on efficiency, almost to the exclusion of other factors such as effectiveness and, most fundamentally of all, fairness and due process. This reflected an unfortunate misunderstanding of the Tribunal's primary aim and function — which are to deliver justice — and its unique nature as an international judicial institution.

There is a systemic institutional problem with international justice. It is called politics. While the Tribunal appreciates that political sensitivities may arise in certain circumstances as a result of cooperating with the ICTY, these can never constitute an excuse for failing to do so. Cooperation is a vital responsibility flowing from the statute of the Tribunal itself, and reflects the collective will of the Security Council in our common fight against impunity.

I am referring to the pending contempt case of *Prosecutor v. Jojić et al.*, in which the Republic of Serbia has yet to execute the arrest warrants for three indicted persons that were issued 22 months ago. It has further failed to file any monthly progress reports since May 2016. The Trial Chamber seized of the case advised me in September of Serbia's continued non-cooperation under article 29 of the Tribunal's Statute. In addition, one week ago theTrial Chamber made public international arrest warrants and orders to surrender the three indictees, which it had issued confidentially

in October. I therefore request the Security Council's support on the matter. In particular, I urge the Council to ensure that Serbia abides by its duties under article 29 of the Tribunal's Statute and complies with the Tribunal's orders. Furthermore, the Tribunal calls on all Member States to execute the international arrest warrants and orders to surrender.

In the past, the Security Council has called on States to cooperate with the Tribunal pursuant to their obligations under article 29. There is no reason that this contempt case should be treated any differently, particularly when what is at stake is the integrity of the Tribunal's administration of justice. Indeed, contempt of court sabotages the Tribunal's ability to conduct fair and efficient legal proceedings. Furthermore, Serbia's past cooperation does not excuse its current non-compliance or release it from its ongoing obligations. If the *Jojić et al.* case is not heard and concluded before the end of November 2017, it will constitute a serious blow to all of the efforts to pursue accountability that the Council and the Tribunal have made together over a quarter of a century. I trust that the Security Council will take the necessary steps to prevent such a failure of international justice. I would like to assure the Council that my insistence that the case be heard is not in any way an attempt to extend the duration or life of the Tribunal. The Tribunal stands ready to dispose of the case expeditiously, in accordance with due process and fair trial rights.

While I take enormous pride in closing down an institution of the calibre of the ICTY, I can assure the Council that it is by no means an easy task. Indeed, the last point I would like to raise is one that the Council is very familiar with by now, and it concerns the Tribunal's staffing situation. Let me emphasize that my commitment to concluding the Tribunal's work on time is unwavering. However, I feel compelled to continue to raise the issue because it concerns circumstances beyond and outside my control, and because it has a significant impact on the functioning of the Tribunal. The reality is that staff attrition will, if left unchecked, increase the risk that the Tribunal will not be able to complete its remaining cases by the end of November 2017. In that connection, the Tribunal has formulated a proposal for the consideration of the General Assembly, which is being discussed with the Secretariat. If adopted, the proposal will help to mitigate the risk posed by staff attrition, and I very much hope that Member States will lend their support in that regard. On the Tribunal's side, we have exhausted all available options and are now relying on the Organization to find an adequate solution.

In conclusion, I would like to say that we should not forget that the development of an international justice system is a long-term project and that, in the grand scheme of things, we are just getting started. The Tribunal has played an enormous role in those beginnings. Not only has it changed the way we think about and react to impunity, it has served as a powerful catalyst for the establishment of other international courts and tribunals. As we approach our final year of operations, there is much to reflect on and be proud of. The Tribunal looks forward to completing its remaining cases and cementing its significant legacy during 2017, and to continuing to work with the Security Council towards the conclusion of its mandate.

The President (*spoke in Spanish*): I thank Judge Agius for his briefing.

I now give the floor to Judge Meron.

Judge Meron: It is an honour to appear before the Security Council once again. I would like to congratulate Spain on its presidency of the Security Council this month. I also remain deeply grateful to the Security Council's Informal Working Group on International Tribunals, for its support of the International Residual Mechanism for Criminal Tribunals, and to Uruguay for its able leadership of the Working Group. Finally, I would like to express my sincere thanks to Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, Mr. Stephen Mathias, Assistant Secretary-General for Legal Affairs, and their colleagues in the Office of Legal Affairs for their ongoing and critically important assistance.

Less than two weeks ago, we opened the Mechanism's new premises for the Arusha branch. Her Excellency Ms. Samia Suluhu Hassan, Vice-President of the United Republic of Tanzania, presided over the opening ceremony, with Mr. De Serpa Soares representing the Secretary-General. The new premises would not have been possible without the exceptional generosity of the Government of Tanzania. The success of the project is also due in very large part to the dedication of the Mechanism's Registrar, Mr. John Hocking, and his staff. I would like to take this opportunity to express my deep gratitude to Mr. Hocking for his exceptional service to the Mechanism since 2012, and to extend

my sincere welcome to Mr. Olufemi Elias, who was recently appointed to be the next Registrar.

The new premises include a dedicated archive facility, which will enable the archives of the International Criminal Tribunal for Rwanda (ICTR) and the Mechanism to be housed together at the Arusha branch, as the Council has directed. I should note that the Government of the Republic of Rwanda, at a senior level, recently informed me of its firm view that the archives should be physically located in Rwanda, while at the same time accepting United Nations management and ownership of the archives, as set out in the Mechanism's statute. Our new premises in Arusha are minimalist in design and efficient in their use of resources, and they reflect best practices in myriad ways as, indeed, we strive to do in all aspects of our work in the Mechanism. It is significant in that regard that the premises were completed under budget, for we recognize that the Mechanism stands not only as a symbol of accountability and the rule of law but as a new model of, and for, international justice — a modest, efficient and cost-effective model that must succeed if international justice and the fight to end impunity are themselves to succeed in the long run.

As detailed in my written report (see S/2016/669), the past six months have seen the Mechanism make good progress on a number of fronts, from its cases to the development of its regulatory framework. In the appeal cases of *Karadžić* and *Šešelj*, briefing is ongoing before the Mechanism's Appeals Chamber, while the pretrial conference in the *Stanišić and Simatović* retrial is anticipated in the first quarter of 2017. Of the 214 judicial decisions and orders issued during the reporting period, nearly 40 per cent related to requests for access to confidential information, just one of the many ways in which the Mechanism provides assistance to national jurisdictions. That work has been supported by an exceedingly lean staffing structure in Chambers. The Mechanism has also taken steps to be fully self-standing by the end of 2017, while continuing to carry out key functions such as the protection of vulnerable witnesses.

The Mechanism is able to do a great deal on its own, but it is also dependent upon cooperation from others. The Mechanism is deeply grateful for the assistance provided to it by the International Tribunal for the Former Yugoslavia and for the support provided by its host States. The Mechanism also remains reliant upon cooperation from Member States when it comes to the apprehension of the remaining fugitives, the enforcement of sentences and the identification of a resolution for the difficult situation involving those acquitted or released individuals currently present in Arusha. I call upon all Member States to support our efforts in that regard.

It is in that context that I am compelled, by virtue of my role as President, to raise the serious matter of the continuing detention of Judge Aydin Sefa Akay, a situation that is having an impact upon the effective discharge of the Mechanism's mandate, and about which I previously briefed the members of the Council. Judicial independence is a cornerstone of the rule of law, and it is a long-standing and consistent practice to afford international judges privileges and immunities in order to protect the independent discharge of their judicial functions. The statute of the Mechanism, adopted by the Council — acting under Chapter VII of the Charter of the United Nations — follows that same practice in according the judges of the Mechanism diplomatic immunity for those periods of time in which they are engaged in the business of the Mechanism. As a result of that legal framework, Judge Akay enjoyed diplomatic immunity from the time of his assignment to the *Ngirabatware* proceedings, on 25 July 2016, and will continue to enjoy such immunity until the end of those proceedings. To my great regret, notwithstanding the diplomatic immunity to which Judge Akay is entitled, he remains detained and unable to carry out his duties as a judge on that case.

Some may believe that, from the Mechanism's perspective, the situation could be resolved by my replacing Judge Akay on the bench of the *Ngirabatware* case, thereby enabling that case to proceed. Let me be clear: that option is simply not open to me as a matter of law and justice. I do not consider it possible, under the circumstances, to reconcile full respect for the fundamental principle of judicial independence with the removal of Judge Akay from the bench to which he has been assigned. I therefore respectfully call upon the Members of the Council to do their utmost to bring about a timely and satisfactory resolution to that situation.

In conclusion, I wish to assure the Government of Turkey that, in raising the matter of Judge Akay's detention before the Council, I do nothing more than what I am compelled to do to fulfil my duties as the President of the Mechanism, that is, to defend the institution and the law governing it. It pains me to do

so. I wish to underscore my full respect for the right of all States, including Turkey, to address legitimate law enforcement concerns in accordance with the rule of law. At the same time, all States must respect their obligations arising from Council resolutions adopted pursuant to Chapter VII of the United Nations Charter. In that context, I appeal to the Government of Turkey, with its strong legal traditions stretching back for many centuries, to release Judge Akay in the spirit of humanitarianism so as to enable him to perform his judicial duties in the *Ngirabatware* case. In doing so, the Government of Turkey would not only demonstrate its support for a Chapter VII tribunal but would play a vital part in enabling the Mechanism to carry out the important mandate entrusted to it.

The President (*spoke in Spanish*): I thank Judge Meron for his briefing.

I now give the floor to Mr. Brammertz.

Mr. Brammertz: In accordance with my dual role, I will report today about both International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals activities in Arusha and The Hague.

My Offices are firmly focused on three priorities: expeditiously completing trials and appeals; locating and arresting the remaining eight fugitives indicted by the International Criminal Tribunal for Rwanda (ICTR); and providing assistance to national jurisdictions prosecuting war crimes, crimes against humanity and genocide.

I first turn to trials and appeals. In The Hague, the ICTY is in the final phase of its mandate. Only two cases remain, and it continues to be expected that the Tribunal will complete its work before the end of next year. This week, my Office is making its closing arguments in the trial of Ratko Mladić, one of the most complex and important cases in the Tribunal's history. Mladić was one of the Tribunal's last fugitives, and his arrest in 2011 was a significant moment for the victims and for international criminal justice. Over the course of his trial, my Office submitted evidence from more than 150 witnesses and more than 7,800 exhibits to prove Mladić's guilt on all 11 charges in the indictment, including genocide in Srebrenica and in the municipalities of Bosnia and Herzegovina. The delivery of the judgment in the *Mladić* case is expected in November 2017.

In relation to ICTY appeals, the judgment in *Stanišić* and *Župljanin* was issued on 30 June 2016, confirming the sentences of 22 years of imprisonment imposed by the ICTY Trial Chamber. In the *Prlić* case, my Office is continuing preparations for the appeal hearing, which is expected to take place next spring.

During the reporting period, the case against Goran Hadžić was terminated, following his death in Serbia. My Office deeply regrets that the case was not brought to an end with a verdict on the charges. We share the dismay and disappointment of the victims. It would be beneficial to identify and reflect on lessons learned from that case.

With respect to Mechanism trials and appeals in The Hague, pretrial proceedings remain under way in the *Stanišić and Simatović* case, with the retrial expected to commence sometime in the first quarter of 2017. In the *Šešelj* and *Karadžić* appeals, we filed our appeal briefs on 18 July and 5 December 2016, respectively. We are now intensively working on our response to the 50 grounds of appeal raised by the Karadžić defence team.

Regarding the Arusha branch, no trials or appeals are currently ongoing. However, during the reporting period, my Office conducted two investigations, one in relation to a contempt case and the second in relation to a completed case. Furthermore, my Office is monitoring five ICTR cases that have been referred for trial to the national courts of Rwanda and France.

In a notable development during the reporting period, the Mechanism Appeals Chamber issued its decision in the *Uwinkindi* case, rejecting the accused's application to revoke the referral of his case to Rwanda and reaffirming that conditions exist for fair trial in Rwanda. My Office hopes that positive development will support continued cooperation by third-party States with Rwanda in extradition and related proceedings.

Cooperation by the countries of the former Yugoslavia with the ICTY and Mechanism Offices of the Prosecutor remains critical to the completion of our mandate, including in particular our trials and appeals. My Office echoes President Agius' grave concern that Serbia continues to ignore and breach its legal obligation to cooperate with the ICTY. We join the President in again urging Serbia to return to the path of full cooperation.

Our second priority is locating and arresting the remaining eight ICTR fugitives. All victims share the same hope of seeing those responsible for the crimes against them brought to justice, so it remains of critical importance that these eight fugitives be arrested and stand trial.

During the reporting period, we completed our overall review of tracking efforts to date, and major steps are now being undertaken to resolve the challenges identified. My Office hopes to be able to report positive results in the future from our renewed efforts.

Our final priority is assisting national judiciaries prosecuting war crimes committed in the former Yugoslavia and Rwanda. In relation to Rwanda, my Office continued its close cooperation with the National Public Prosecution Authority and the Prosecutor-General. This cooperation remains smooth and effective, and there are no issues to report. My Office underscores, in that regard, that the search for fugitives is not limited to the eight remaining ICTR indictees. Rwandan authorities have identified more than 500 suspects who are present in other countries. These case files must be processed and prosecutions must be brought where there is sufficient evidence of guilt. My Office encourages third-party States to work with Rwandan authorities and ensure that those cases are completed.

In relation to the former Yugoslavia, the situation is unfortunately more mixed. While judicial accountability for war crimes continues, political trends are moving in a negative direction. My Office recognizes that results are being achieved in national prosecutions of war crimes. As one notable example, the Prosecutor's Office of Bosnia and Herzegovina has been building on past results in the Category II cases by continuing to file significant indictments against senior- and mid-level suspects, as well as for historically under-addressed crimes such as conflict-related sexual violence.

However, during the reporting period regional judicial cooperation experienced a significant setback with the failure of Serbian authorities to enforce the war crimes conviction in the *Djukić* case for more than a year. Serbia adopted its National Strategy for the Prosecution of War Crimes and Chapter 23 Action Plan, which my Office has welcomed on several occasions, but so far there has been little evidence that these commitments are being implemented. The Serbian Government has failed for almost a year to appoint a new Chief War Crimes Prosecutor. The promised and much-needed additional staff and resources for the War Crimes Prosecutor's Office have not yet been provided. Activities to strengthen the Special Investigative Service for War Crimes within the police remain pending. During my last visit to Belgrade, I underscored that progress on war crimes justice will not be achieved if Serbia does not put into practice the steps it identified in the Strategy and Action Plan. Serbian authorities gave me assurances that immediate action would be taken, but unfortunately none of those commitments has been honoured.

With respect to Croatia, there continues to be a disconnect between the official commitment to supporting war crimes justice and what is happening in practice. As previously reported, Croatian Government policy is obstructing judicial cooperation in certain war crimes cases, including Category II cases prepared by my Office. We have listened to Croatia's concerns, but it must be emphasized that, whatever the intention, current policy represents political interference with the justice process. My Office again urges Croatia to bring its policies in line with its commitments. These and similar political issues are negatively impacting national war crimes prosecutions, as my Office warned six months ago. Concrete cases are not moving forward, and regional judicial cooperation is under significant stress.

My Office is further concerned that politicians and Government officials from the region are still undermining trust in judicial accountability for war crimes and calling into question the independence and impartiality of the judiciary. This poses a real risk to the rule of law throughout the region. Reactions to the recent arrests of 10 suspects in Orašje, Bosnia and Herzegovina, starkly illustrated this worrying trend.

The glorification of war criminals also continues throughout the region, as demonstrated by Republika Srpska National Assembly's decision to officially decorate convicted war criminals. As long as the political environment and mindset do not support war crimes justice, it will be extremely difficult to meet the public's legitimate expectations for meaningful accountability.

Let me be clear that it is possible to reverse these negative political trends. My Office calls upon officials in the region to act responsibly and refrain from politicizing ongoing investigations and prosecutions. My Office also urges Bosnia and Herzegovina, Croatia

and Serbia to return to constructive regional cooperation and swiftly undertake steps to rebuild trust in judicial accountability for war crimes. The international community can help by providing positive incentives and utilizing conditionality policies. As always, my Office stands ready to work with the countries of the former Yugoslavia and support initiatives to improve mutual trust and move the accountability process forward.

On a more positive note, the Office of the Prosecutor of the International Residual Mechanism for Criminal Tribunals continues to receive numerous requests from colleagues and Governments around the world to assist in strengthening domestic accountability for war crimes. At a time when international justice is the topic of much discussion, there should be agreement that one step forward is to ensure that national judiciaries are able to prosecute international crimes.

We feel privileged that colleagues and partners throughout Africa fully support the work of the Office of the Prosecutor of Residual Mechanism and are eager to work with my Office to develop national judicial capacities. As just one example of what can be done, my Office, with the generous financial support of partners, was recently able to train 30 prosecutors and professionals from Kenya, Rwanda, South Sudan, Tanzania and Uganda on the prosecution of conflict-related sexual violence.

Similarly, during my missions to the former Yugoslavia, victims associations and prosecutors expressed their appreciation for my Office's support and engagement in strengthening national capacities. Reflecting this commitment, our publication on lessons learned in the prosecution of conflict-related sexual violence will now be translated for national prosecutors in the countries of the former Yugoslavia.

With the presentation of final arguments in the *Mladić* case, ICTY took another significant step closer to completing its mandate. My Office is continuing its downsizing accordingly. At the same time, the transition of responsibilities from ICTY to the Residual Mechanism continues as foreseen in Security Council resolutions.

I would like to close by expressing my Office's gratitude to Secretary-General Ban Ki-moon. Since his first visit to ICTY in early 2007 until today, the Secretary-General has provided steadfast support for my Office's work and the fight against impunity. On behalf of the Offices of the Prosecutor of the ICTR, ICTY and the Residual Mechanis, I would like to thank the Secretary-General for standing behind us and giving us his full support, and I look forward to our continued cooperation with Secretary-General-designate António Guterres.

The President (*spoke in Spanish*): I thank Mr. Brammertz for his briefing.

On behalf of all the members of the Security Council, I would like to express our profound gratitude to the three briefers for their participation in this meeting and for their detailed, useful and informative reports. We also thank and commend them for their excellent work.

Before giving the floor to the members of the Security Council and the representatives of other States, I should like to remind all speakers to limit their statements, to the extent possible, to a maximum of five minutes in order to allow the Security Council to complete its work expeditiously. In that regard, I take this opportunity to remind speakers that the presidency shall activate the light on their microphone in order to encourage them to complete their remarks. Delegations wishing to make extensive statements should kindly distribute them in writing and to deliver abbreviated versions in the Chamber.

I now give the floor to members of the Council.

Mr. Rosselli (Uruguay) (*spoke in Spanish*): I should like to reiterate Uruguay's steadfast commitment to the work of the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Residual Mechanism for Criminal Tribunals, and to upholding the principle of independence of justice. My country recognizes the significant contribution of these Tribunals to international justice in cases of crimes against humanity, war crimes and genocide, and their roles in ensuring accountability and promoting reconciliation.

I shall refer first to the International Tribunal for the Former Yugoslavia. We note with satisfaction the continued progress of the judicial activities of that Tribunal and the reaffirmation of the forecast that it will finish its judicial work on time and achieve its closure at the end of 2017. At the same time, we take due note of the two situations that could affect that forecast, to which President Agius referred. The first refers to the three individuals accused of contempt of court in the *Prosecutor v. Vojislav Šešelj* case and the

arrest warrants issued in January 2015, which remain pending. This situation has been highlighted by the President and the Prosecutor of the Tribunal. The second of them refers to the difficulties facing the Tribunal for retaining its staff until the end of its work, in particular officials with the greatest experience.

As current Chair of the Informal Working Group on International Tribunals, we will closely follow developments in both situations and are willing to cooperate as far as we can to reach a solution. We call upon all members of the Organization to actively contribute to resolving these situations and share our belief that the interests of international justice must prevail over circumstancial political and financial factors.

I will now turn to the International Residual Mechanism for Criminal Tribunals. We are pleased to note the forecasts for the duration of various judicial mandates are the same as those stipulated in the report of 20 November 2015, including all updates. We take note of the priority for the Mechanism of the search and prosecution of the eight people accused by the International Criminal Tribunal for Rwanda who are still on the run, as well as of the importance to that end of inter-State cooperation. We also refer to the problem of the reintegration of persons released or acquitted and of the dialogue that the Mechanism has with the States who have indicated their willingness to receive one or more of such persons.

As Chair of the Informal Working Group on International Tribunals, we take note with great concern of the situation with regard to the case of the defendant Agustin Ngirabatware and Judge Akay. The situation is very delicate. We call on all the actors involved to reach a solution for the benefit of justice and with the due guarantees for all parties.

Before concluding, I want to thank the Office of Legal Affairs and the Secretariat for their continued support for our work, as Chair of the Group, and, on a personal level, to highlight the great respect we have for the authorities of the International Criminal Tribunals who are present in the Chamber today.

Mr. Van Bohemen (New Zealand): New Zealand remains a strong supporter of the work of the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals. As someone who worked on the Security Council resolutions that established the ICTY and the International Criminal Tribunal for Rwanda (ICTR), I feel a special sense of connection with the work of the Tribunals. Back then, none of us expected that we would still be sitting in the Security Council 23 years later considering the Tribunals' completion strategies. New Zealand agrees that this has taken far too long.

We must all take our share of the responsibility for this situation. It is true that the Tribunals could have done more to expedite their work, but it is also clear that political factors have also played a major role in this delay. Governments have not always provided the level of cooperation required and the Council has not been as effective or active in supporting progress as we believe it should have been.

As the ICTY enters its final year, New Zealand agrees that its exclusive focus should remain on completing its work by the end of 2017. Both the Presidents' reports and Prosecutor's reports highlight the challenges to be faced in meeting this deadline, but it must be met. The Council and the United Nations must support the ICTY in achieving this. In this regard, we support the adoption of an incentives package for staff members to encourage them to remain with the ICTY until the end of their contracts. That is sensible business planning and we commend the Tribunal for its perseverance on this issue.

The cooperation of all relevant States with the ITCY remains essential to its completion strategy. It is axiomatic that all States are required to cooperate with the Tribunals in order to ensure justice is delivered. That obligation applies particularly to the States of the region. These requirements are set under international law and should not be subject to domestic law constraints. In that connection, we urge Serbia to lend its full support to the ICTY's work. While we understand that it is important to respect the different competencies of the judiciary and the executive, the national obligation to cooperate remains and cannot be ducked by suggesting the issue is for someone else to address.

We have taken note of the deficiencies identified by the evaluation report (S/2016/441) of the Office of Internal Oversight Services (OIOS), but at this stage in the Tribunal's life cycle, we believe the focus must be on the practical and the achievable. It makes little sense to divert precious resources from core completion work. We therefore welcome the practical alternative suggestions provided by the Tribunal. We are pleased to see the Mechanism's continued commitment to

maximizing effectiveness and efficiencies and we commend the flexibility it has shown during the transition phase with the ICTY, including through the One Office approach and dual hatting of some staff.

New Zealand raised the important ICTR legacy issue of access to archives issue during the Council's last debate in June (see S/PV.7707). We understand and support the desire of the Rwandan Government to have the originals of the archives located in Rwanda. This desire is not peculiar to Rwanda. Any of us in a similar situation would want documents critical to our national history to be located in our own territory. We recognize there are practical and process issues to be worked through, and hope these can be resolved. This is an important issue of principle.

The Mechanism's report also highlights the increasingly urgent need for a comprehensive solution to the issue of relocation. We reiterate our call to the Mechanism to develop a process for risk-based assessments for relocation of those acquitted and for released persons remaining in the Arusha safe house.

As New Zealand prepares to complete its current term on the Council, I wish to offer some concluding thoughts on how the Council makes use of its relationships with relevant international legal institutions in discharging its mandate. These organs all have their own areas of primary competence, but they all operate at the intersection of international law and peace and security. Overall, it is hard to escape the impression that Council members appear less aware of the legal and judicial contexts which could support their work than they were when New Zealand last served on the Council two decades ago. Politics now seems to dominate completely and it is hard to argue that this has made the Council more effective. The question I want to leave with Council members is: how can we do better?

At the macro level, the members of the Council need to accord greater respect to the mechanisms it establishes for the administration of justice. While the Council may be a political body, the judicial mechanisms it establishes must manifest independence, transparency and freedom from politics — the hallmarks of justice in any credible legal system. At the more immediate level, New Zealand encourages the Council and its Informal Working Group on International Tribunals to be active in monitoring the issues we have raised in our statement, including the Mechanism's progress on the ICTR archives and the relocation of released or acquitted persons.

Mr. Stehelin (France) (*spoke in French*): France would like once again to thank and confirm its support for the staff of the Tribunals for the work they are undertaking in order to carry out the legal proceedings. While the President of the International Residual Mechanism for Criminal Tribunals is requesting a final extension until 2017 to complete that work, it is extremely important that he be able to count on the engagement of all his staff until the end.

We pay tribute in particular to the commitment of President Agius to take the lead. By adopting resolution 2306 (2016), on 6 September, which authorized the urgent nomination of an ad hoc judge on a temporary basis within the Appeals Chamber, the Council sought to give its full support to these efforts. It is in this same spirit that France supported the extension of the mandate requested by the ICTY President in his letter of 4 November.

The Tribunal will bring its work to a close in 2017, and we recall the significant achievements of the ICTY in the service of justice and peace. In the view of the French delegation, it should be an opportunity to take stock of the achievements and good practices of this Tribunal, as well as avenues for improvement for more effective justice. The ICTY has played a pioneering role in bestowing its experience to other international judicial institutions. That outstanding work must evolve and continue to be dynamic. But more than ever, the States of the region must show that they have the will to put the achievements of the judiciary at the service of stability over the long-term. They therefore must continue to cooperate fully with the ICTY as well as with the International Residual Mechanism for Criminal Tribunals in accordance with the relevant resolutions of the Security Council.

In 2016, in accordance with resolution 2256 (2015), an assessment of the working methods of the ICTY was conducted by the Office of Internal Oversight Services (OIOS), which resulted in recommendations. The French delegation welcomes the fact that a code of conduct was annexed for judges of the Tribunal to the report of 6 July 2016 following the recommendation contained in the OIOS report (S/2016/669). We are encouraged by the Tribunal's willingness to reformulate certain recommendations, which attests to a more in-depth exploration of finding ways for improvement and

meaningful dialogue with regard to management. More than ever, as victims call for justice to be done, such an effective approach must become a continual concern.

The branches of the International Criminal Tribunal for Rwanda (ICTR) and ICTY of the Residual Mechanism, the role of which is temporary, are committed to the same dynamic. France is pleased that the institution is inspired by the good practices of the ICTR and the ICTY and is actively seeking new solutions to improve its functioning. In that regard, every State must do everything possible to ensure that this temporary entity can work in full compliance with its statute and procedural safeguards.

Following the ICTR, the ICTY will also soon conclude its work. If the Security Council decided to establish those international criminal tribunals in the 1990s, it was because of its conviction that the States concerned and their citizens would be the first to benefit from the progressive strengthening of the rule of law, by which the independence of the judiciary is fully assured and the duty to remember fulfilled. Each of those States will henceforth be the best agents to ensure that what are known as intermediate criminals are tried in a context of increased regional and mutual cooperation, and lastly, in the effort towards regional reconciliation and the preservation of memory.

Mr. Li Yongsheng (China) (*spoke in Chinese*): China thanks President Agius, President Meron and Prosecutor Brammertz for their respective briefings on the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals.

Over the past six months, the ICTY has continued to make progress in its work. It delivered a judgment in the appeal case of *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, terminated the trial case of *Prosecutor v. Nyiramasuhuko et al.* ("Butare"), and made continued progress in the trial of *Prosecutor v. Ratko Mladić* and the appeal of *Prosecutor v. Prlić et al.* China expresses its appreciation for those activities. China has taken note of the challenges facing the Tribunal that President Aegis and Prosecutor Brammertz referred to in their respective reports (S/2016/976 and S/2016/976, annex II) and hopes that the Tribunal will take measures to enhance efficiency and overcome its difficulties. China believes that the ICTY should implement its completion strategy as soon as possible and conclude its work by 30 November 2017.

With regard to the Residual Mechanism for Criminal Tribunals, China congratulates it on the official opening of its Arusha branch. China is pleased to learn that the Residual Mechanism has taken over all the remaining work of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 (ICTR) and continues to carry out its judicial activities. The International Residual Mechanism has also opened the retrial of the *Stanišić & Simatović* case, formulated new rules and procedures, issued a large number of judicial decisions and orders and cooperated with other countries with regard to their own domestic prosecutions. China appreciates those activities. We hope that the International Residual Mechanism will consider the request that it should be small, temporary and efficient, and continue to strengthen and improve its work.

The ICTY will conclude its work by the end of November 2017. China hopes that it will cooperate closely with the International Residual Mechanism to ensure the smooth transfer of its remaining work to the Mechanism. China will continue to support the work of the two institutions.

Finally, I would like to take this opportunity to thank Uruguay, which chaired the Security Council Informal Working Group on International Tribunals, and the Office of Legal Affairs of the United Nations for their work.

Mr. Ciss (Senegal) (*spoke in French*): The Senegalese delegation welcomes this second biannual Security Council debate convened this year on the progress in the work of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY), the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 (ICTR) and the International Residual Mechanism for Criminal Tribunals.

The Senegalese delegation would like to take this opportunity to congratulate Judge Carmel Agius, President of the ICTY; Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals; and Mr. Serge Brammertz, Prosecutor of the ICTY and Prosecutor of the International Residual Mechanism for Criminal Tribunals. I also extend my thanks to Ambassador Elbio Rosselli, Permanent Representative of Uruguay, whom I warmly congratulate, as well as his team, for the outstanding work carried out as Chair of the Informal Working Group on International Tribunals.

Without any doubt, the establishment of the Criminal Tribunals was one of the most relevant initiatives of the United Nations and, at the same time, an important contribution to the preservation and development of international law, the execution of justice, international criminal jurisprudence and the fight against impunity. That ad hoc judicial system has also benefited from the support of the international community, in particular the Security Council, and the cooperation of every State to carry out its mission. It is against that backdrop hat we must contextualize the decision taken by Senegal to take in prisoners of the ICTR, the implementation of which is in its final phase.

That broad support can be explained by the primary goal of implementing a preventive mechanism to prevent the repetition of atrocity crimes, which are a "shame on humankind". Nevertheless, it is regrettable that abominable violations of international humanitarian law continue to be committed throughout the world. The international community must be seized of such violations regardless of their political interests to show the perpetrators of those despicable crimes that they are an affront to our collective conscience and that the perpetrators cannot escape justice. The same international community must also acknowledge that the politicization of the pursuit of justice not only compromises the neutrality and quality of the decisions delivered but also, and above all, severely affects international peace and stability, the preservation of which is the raison d'être of the Council. It is, moreover, more important than ever that national judicial systems finally take the baton to ensure the continuity of the efforts of the international community. It is particularly incumbent upon States to work at the national level to combat impunity and establish equal justice for all.

This debate is taking place in a special context marked by the arrest of one of the Mechanism's judges, Mr. Aydin Sefa Akay, who was accused of belonging to a terrorist organization. Obviously, the Senegalese delegation is closely following that situation and commends the work being carried out by the Office of Legal Affairs of the Secretariat and the Informal Working Group on International Tribunals to find a solution. And we also appreciate Turkey's valuable cooperation. We call on all parties to maintain dialogue and consultations to ensure that the law — the guarantor of peace and security — prevails.

In resolution 2256 (2015), the Security Council called on the ICTY not only to respect the timetable for the completion of its work, but also to reduce the duration of trials. The issue of the reintegration of those who have been acquitted or who have served their sentences, the optimal use of financial and administrative resources, access to archives, the issue of the resettlement of 14 Rwandans and the audit practices within the Tribunal and the Mechanism to improve their functioning are, inter alia, challenges that cannot be overlooked. The same goes for the issue of attrition of staff, which also deserves special attention. In that respect, we welcome the commitment firmly demonstrated today to respect those time frames.

Moreover, the cooperation by the ICTY in the Office of Internal Oversight Services (OIOS) review of the Tribunal's working methods, in accordance with resolution 2256 (2015), is very encouraging. We remain convinced that the process of evaluation is perfectly compatible with respect for judicial independence. It is also a guarantee of the proper administration of justice, which itself remains a guarantee of the credibility of the international criminal justice system. Furthermore, the follow-up to the OIOS recommendations concerning the establishment of, on one hand, a code of conduct and a disciplinary mechanism applicable to judges and, on the other hand, a system of centralized information on downsizing, remain paramount to us.

Finally, the temporary nature of the Tribunal's mandate, as well as that of the Residual Mechanism, implies the need to adopt management that embraces the diversity of systems and ensure a balanced geographical representation within it. Those are principles for which no derogation will be tolerated, taking into account the survival of our institutions and the future of our planet.

Mr. Zagaynov (Russian Federation) (*spoke in Russian*): We have carefully reviewed the reports of the International Tribunal for the Former Yugoslavia

(ICTY) (see S/2016/670) and the International Residual Mechanism for Criminal Tribunals (see S/2016/669 and S/2016/975) from the past six months. We are pleased to note that the ICTY report does not contain information of further delays in the proceedings, which will be completed by the end of 2017. The Tribunal, despite being considerably behind the deadline set by resolution 1966 (2010), will still complete its work. There is still hope that planned time frames for judiciary proceedings will be reduced, in accordance with what the Security Council urged in resolutions 2193 (2014) and 2256 (2015). We call on ICTY leadership to make every efforts to ensure that proceedings are finished expeditiously.

The Security Council continues to take measures to ensure the smooth and uninterrupted work of the ICTY. Recently in the Tribunal's statute, an ammendment was introduced to allow it to involve a judge on the register of the Residual Mechanism to work in the Appeals Chamber. That concerns resolution 2306 (2016), which was promptly adopted at the request of the Tribunal.

We believe that the Tribunal is adequately staffed and has been provided with sufficient funding. Delays in court proceedings, of which the Council was previously informed, were due to, according to our estimates, more administrative failures, such as, for example, uneven distribution of workload among judges, imprecise legal assessment of the complexity of cases and the unnecessarily long preparation of cases. We understand the desire of the leadership of the Tribunal to retain staff with institutional memory. However, we believe that requests for all sorts of bonuses do not meet the conditions of service of the United Nations. They make us wonder to what extent the Tribunal's staff is actually committed to its goals.

As for the case of contempt of court, initiated by the Tribunal in connection with the concluded case of *Prosecutor v. Vojislav Šešelj*, we would like to refer to a decision of the Security Council that approved the strategy of completing the ICTY's work in 2002 and 2003, a well as resolution 1966 (2010), which states that the Tribunal must focus its efforts on judicial prosecution and bringing to justice high-level officials who are suspected of being responsible for serious violations of international humanitarian law committed in the former territory of Yugoslavia starting in 1991. Cases on contempt of court obviously do not apply. Possible options to ensure the interests of justice in this situation, including the transfer of minor cases to national jurisdiction, are also given in the Council resolutions to which I referred. In any case, this topic should not have influence the strategy of closing down the Tribunal.

It is clear that there is no relation to the task of ensuring justice for the most serious crimes on which the Tribunal is focused, and the identification of issues such as the political climate and mentality in one country or another, or the historical world view, staffing solutions. We urge the officials of the Tribunal not to be distracted by such trifles from the objectives set by the Tribunal's statute and the decisions of the Council.

My delegation has for several years advocated an initiative to conduct an independent review of the work in the ICTY. At the final stage of the Tribunal's mandate, the Office of Internal Oversight Services (OIOS) conducted such an assessment, in accordance with resolution 2256 (2015). As we expected, in some cases, auditors found problems to which we have repeatedly tried to alert the Council, including the lack of clear and sound guidelines for the duration of proceedings. We are grateful to the OIOS for its work. Unfortunately, the Tribunal did not accept all the recommendations addressed to it. We hope that the analysis of the OIOS recommendations and their implementation will continue.

We are closely watching the work of the Residual Mechanism. We would like to recall that, in accordance with resolution 1966 (2010), the Mechanism is a temporary, compact structure established in order to complete the process of closing down the ICTY and the International Criminal Tribunal for Rwanda. It is not a new model of an international judicial authority. The duration of the mandate of the Mechanism is limited and conditioned by a biennial review cycle of its activities undertaken by the Security Council.

The Mechanism's report does not give any preliminary forecasts for the period of consideration of certain cases, which have been on its register for almost a year. We make a call to fix that problem in future reports. We expect from that body strict adherence to efficiency and transparency, including the timing of proceedings. We hope that the Mechanism will use all procedural opportunities inherent in its statute, including in the event of unforeseen circumstances.

Mr. Akahori (Japan): Japan is deeply committed to the rule of law and fully supports the activities of the International Tribunal for the Former Yugoslavia

(ICTY) and the International Residual Mechanism for Criminal Tribunals. We highly value their important role in the fight against impunity.

We appreciate the Tribunal's efforts in delivering the Appeals Chamber's judgment on *Prosecutor v. Mićo Stanišić and Stojan Župljanin* in June, which handed down 22-year prison sentences to those responsible for crimes against humanity and violations of the laws or customs of war. Japan hopes that the judgment will help to bring justice to the region. The judgment was delivered in line with the projected timeline despite serious staff attrition. We commend the leadership of President Agius and call upon the ICTY to maintain its judicial timeline as it approaches closure at the end of 2017. The Tribunal requires full cooperation from Member States to carry out its mandate. We are therefore concerned by instances of non-cooperation. We recall that Member States are required to cooperate fully with the ICTY. The relevant States must meet their obligations.

We thank the Office of Internal Oversight Services (OIOS) for its report (S/2016/441) and recommendations. Japan takes note of implementation efforts by the Tribunal, which resulted in a code of conduct. While the implementation of the OIOS recommendations is important, we must not forget that the Tribunal's priority should continue to be the completion of its judicial work by the end of next year.

Turning to the Mechanism, we first offer our congratulations on the Mechanism's opening of its new premises in Arusha in November. We request the Mechanism, which is now in the phase of handling the retrial and appeals from the ICTY, to work effectively and efficiently to deliver its judgments as projected and, if possible, to shorten its time frame. Arresting remaining fugitives is a priority for the Mechanism, and we take note of the overall review by the Prosecutor of efforts in that area. We hope that new steps based on such a review will bring positive results, and once again call upon all the relevant States to cooperate fully with the Mechanism.

Japan expresses its gratitude to the dedication of both the ICTY and the Mechanism. We strongly hope that the work of both bodies will help victims see the justice that they have long awaited.

Mr. Ibrahim (Malaysia): I, too, would like to welcome the Judges and Prosecutor representing the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals back to New York. I thank them for their very comprehensive briefings.

My delegation welcomes the notable progress made by the ICTY and the Residual Mechanism during the reporting period. In particular, we wish to congratulate the Residual Mechanism on the official launching of its new premises in Arusha last month. We commend the Government of Tanzania for its crucial role and valuable contribution in that regard.

Malaysia is encouraged by the smooth functioning of the Residual Mechanism in assuming responsibility for a number of functions of the International Criminal Tribunal for Rwanda (ICTR) and the ICTY. We reiterate our call on Member States to fully support the Mechanism, especially in tracking the remaining fugitives indicted by the ICTR, to enforce sentences and to relocate those who have served their sentences or who have been acquitted by the Tribunal.

Turning to the ICTY, Malaysia is reassured by the commitment expressed by its President that the judicial work of the Tribunal remains on track and is to be completed by November 2017. We welcome the progress made in the cases of *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, *Prosecutor v. Prlić et al.* and *Prosecutor v. Ratko Mladić* during the reporting period.

Malaysia takes note of the evaluation by the Office of Internal Oversight Services (OIOS) on the methods and work of the ICTY and the Tribunal's response to the OIOS report (S/2016/441). We welcome the adoption of a code of professional conduct by the judges of the Tribunal, in line with the OIOS recommendations. While other recommendations of the OIOS may have some merit, we believe that at this point the Tribunal should focus its time and resources on completing its judicial work within the stipulated deadline, instead of being distracted by administrative and management issues.

At today's briefing, we have again heard from Judge Agius on how staff attrition continues to seriously impact the work of the Tribunal and could potentially affect its completion strategy. We believe that, on this last leg of the Tribunal's work, Member States should redouble their efforts to support the Tribunal in addressing that critical challenge.

Malaysia views the reversing trend in cooperation with the ICTY as deeply disturbing, especially in the

context of revisionist movements in the region and the glorification of war criminals. These are warning signs that must not be ignored by the international community, as they could undermine the great strides that we have made in recent decades towards ending impunity for war crimes, genocide and crimes against humanity. In that regard, we urge Serbia to uphold its legal obligations to resume cooperation with the Tribunal, including by executing the Tribunal's arrest warrants. We also call on the relevant Member States in the former Yugoslavia to intensify the pace and effectiveness of war crimes prosecutions by their national authorities for cases being referred to their national jurisdictions.

More than 20 years ago, the Security Council decided to create the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to try those responsible for serious violations of international humanitarian law, including genocide, mass rape and ethnic cleansing. The painful truth is that if the Security Council had the political will to prevent or stop the mass atrocities committed in Rwanda and in the Balkans region and to uphold its responsibility to maintain international peace and security under the Charter of the United Nations, there would have been no need for either Tribunal to be created.

However, in the bloody aftermath of the conflicts in Rwanda and in Bosnia and Herzegovina, the Security Council owes it to the victims to bring the perpetrators to justice for their heinous crimes. We also owe it to the victims to remain firm in our commitment to justice and accountability, many years later, and to fully support the Tribunals in fulfilling their mandates until the end of operations. We simply do not have the moral standing to disown the Tribunals.

Malaysia is therefore incredulous that the priorities of ensuring justice and due process seem to be buried in overwhelming concerns about budget and deadlines. There is no doubt that the historic legacy of the ICTY and the ICTR in ending impunity and in laying the foundation for international criminal justice will remain long after the Tribunals' closure. What is less obvious is whether the Security Council will also be on the right side of history in supporting the Tribunals and the Residual Mechanism all the way in ending impunity.

Ms. Mulvein (United Kingdom): At the outset, I would like to reiterate the United Kingdom's continued support for and commitment to the work of the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals. They are leading the fight against impunity, holding perpetrators to account and achieving justice for victims. That is work that is sadly in great demand across the world today — in Syria, in Iraq and in so many other places.

We are pleased that the ICTY's work remains on track as it heads towards closure in 2017. While we regret that the *Prosecutor v. Goran Hadžić* trial could not be completed, it is undeniable that progress has been made. The *Prosecutor v. Mićo Stanišić and Stojan Župljanin* appeal has concluded, substantial steps have been taken towards completion of the *Prosecutor v. Ratko Mladić* trial, and the *Prosecutor v. Jadranko Prlić et al.* appeal continues to progress. Transition to the Mechanism also continues on schedule.

We are grateful for the efficiency and downsizing measures that have taken place in order to achieve this, and we were happy to support the amendment to the ICTY statute enabling the appointment of ad hoc Appeals Chamber judges, which is a necessary practical step on the Council's side to enable the Tribunal to complete its work. We recognize the difficulties caused by staff attrition, and we appreciate the efforts made to counteract that. We hope that staff will remain in their roles until the end of the mandate to complete the Tribunal's work.

Cooperation with the ICTY by all States remains as important as ever. We welcome the continued cooperation between the Office of the Prosecutor of the ICTY and the authorities of the States in the region. However, we are concerned that the political environment is having a negative impact on regional judicial cooperation, and we echo the Prosecutor's call for urgent steps to be taken to mitigate and reverse the situation. We are particularly concerned that the arrest warrants for the three individuals in the contempt cases have still not been executed. We urge Serbia to meet its obligation to cooperate and surrender those individuals to the Tribunals. Lack of agreement at the regional level to extradite war crimes suspects also severely hinders efforts to bring prosecutions for war crimes. This hampers reconciliation and could undermine the legacy of the ICTY.

Turning to the recommendations of the Office of Internal Oversight Services (OIOS), we are pleased that the ICTY has already implemented the recommendation

on developing a code of professional conduct for judges. We believe all international tribunal judges should be subject to such codes. We also welcome the ICTY judges' indication of their willingness to accept a disciplinary mechanism and that they consider this desirable. We agree, but we think it is too late in the Tribunal's life to implement all the OIOS recommendations. That risks diverting resources from completing the core functions, which must be the focus. Finally, on the ICTY, we welcome plans for legacy work, and we will be supporting the ICTY legacy dialogue.

Turning to the Mechanism, we are pleased with its work in the past six months, including on ensuring a smooth transition for the ICTY to the Mechanism. Judicial work is proceeding efficiently, including on the *Prosecutor v. Jovica Stanišić and Franko Simatović* retrials and the appeals in the cases of *Prosecutor v. Radovan Karadžić* and *Prosecutor v. Vojislav Šešelj* transferred from the ICTY. We are concerned by the situation of Judge Akay, noting that the Secretary-General has asserted immunity, but Turkey has disagreed with that position. We also note that there are ongoing legal proceedings before the Mechanism. We hope that an appropriate resolution can be found as quickly as possible.

It is important that all those indicted by the International Criminal Tribunal for Rwanda be apprehended and face trial before the Mechanism. We are grateful to the Prosecutor for his ongoing efforts to locate and arrest fugitives, and we call on all States to cooperate to that end. Equally, as in the former Yugoslavia, national prosecutions are essentially for ensuring justice for all victims of crimes committed in Rwanda. We thank the Prosecutor for his ongoing work in that respect and encourage cooperation from all relevant States.

We welcome the reduction in numbers of released and acquitted persons residing in Arusha, as well as the more efficient approach to the upkeep of those who remain there and ongoing efforts regarding relocation. We hope to hear positive developments in that regard in due course.

Finally, we welcome the opening of the new premises of the Mechanism's Arusha branch. The Mechanism has a vital role to play in the international criminal justice system. I would therefore like to close by re-emphasizing our continued support as it carries out the residual functions of the Yugoslavia and Rwanda tribunals.

Ms. Coleman (United States of America): The United States extends its sincere appreciation to President Agius, President Meron and Prosecutor Brammertz for their briefings today to the Security Council as well as for their leadership and contributions to advancing justice for victims of the worst atrocities committed in the former Yugoslavia and Rwanda. Without the diligence and determination of jurists and staff at their tribunals, perpetrators of the worst crimes known to humankind — genocide, war crimes and crimes against humanity — could continue to live freely in impunity, which is an unacceptable outcome.

The persistent efforts of these international criminal tribunals resulted this year in reaching significant milestones that serve to warn would-be perpetrators everywhere that there will be no escape from justice. Earlier this year, former Republika Srpska President Radovan Karadžić was found guilty and sentenced to 40 years in prison for genocide, crimes against humanity and violations of the laws and customs of war — a historic conviction that once seemed impossible. Just this week, the International Tribunal for the Former Yugoslavia (ICTY) commenced closing arguments in the case of Bosnian Serb military commander Ratko Mladić, who stands accused of genocide of Bosniaks from Srebrenica, terrorizing the population of Sarajevo and taking United Nations peacekeepers hostage.

The United States supports the work of the International Residual Mechanism for Criminal Tribunals to conclude expeditiously the retrial of the case in *Prosecutor v. Jovica Stanišić and Franko Simatović* and the appeals proceeding in the cases of *Prosecutor v. Radovan Karadžić* and *Prosecutor v. Vojislav Šešelj*. The ICTY establishes facts through judicial process, which is critical to countering those who seek to distort facts, revise history or rewrite reality.

The United States notes with great concern the detrimental impact of increasingly diverse and divisive political speech in the region about the pursuit of justice for war crimes committed in the former Yugoslavia. Such inflammatory rhetoric can harm regional cooperation among the States of the former Yugoslavia, which is essential to promoting accountability for war crimes.

The United States would like to reiterate the importance of full cooperation of all concerned States

with the ICTY. The United States remains concerned that three arrest warrants for individuals charged with contempt of court in relation to witness intimidation in the *Šešelj* case have remained unexecuted in Serbia for 22 months. Recognizing that cooperation is an ongoing obligation essential to the functioning of the Tribunal, the United States calls on Serbia to execute these arrests expeditiously. Failure to fully cooperate with the Tribunal in accordance with its statutes and the resolutions of the Security Council compromises the core functions of the international justice system and must be addressed with appropriate urgency.

The United States commends recent efforts by the Prosecutor's Office to review its fugitive tracking efforts and implement revised strategies to address key challenges so that the eight remaining fugitives from the International Criminal Tribunal for Rwanda may be swiftly located, arrested and brought to justice. The United States is unwavering in its commitment to ensuring that these fugitives are apprehended and brought to justice, and we continue to offer a reward of up to $5 million for information leading to the arrest or transfer of these eight men. The United States would also like to express our sincere appreciation for the Tribunal's efforts, especially the Office of the Prosecutor, in building capacity among national prosecutors.

The pursuit of justice for victims in Rwanda and the former Yugoslavia must not end with the closure of these Tribunals. While both Tribunals have successfully tried many high-level perpetrators, further accountability for crimes committed depends on fair and effective trials for alleged mid- and lower-level perpetrators in national courts.

The United States remains deeply concerned about the Mechanism's casework, which has been severally impaired while Judge Aydin Sefa Akay, who was expected to be working on a case before the Mechanism, remains detained in Turkey. We recall that the Security Council designed the Mechanism in a way that provides for judges to work remotely, except for sittings or as directed by the President. We reiterate the importance of judges being able to carry out this important work on behalf of the United Nations. With this in mind, we hope that this matter can be resolved expeditiously.

Thanks to the unrelenting dedication of these Tribunals, the victims of horrific atrocities have received a meaningful measure of justice. Promoting justice and accountability is all the more critical in the present moment when leaders' horrific acts against civilians have so far been met with impunity in places such as Syria and South Sudan. The successful completion of the work of the Mechanism will serve to prove that justice is not an afterthought in the work of advancing international peace and security but the core of it.

Mr. Yelchenko (Ukraine): Welcoming the progress reflected in the recent reports of the International Criminal Tribunal for the Former Yugoslavia (ICTY) (see S/2016/670) and International Residual Mechanism for Criminal Tribunals (see S/2016/669), my delegation considers today's meeting and the forthcoming adoption of a resolution reappointing the ICTY judges and Prosecutor to be of utmost importance, in the light of the planned closure of the Tribunal in 2017. In this regard, I would like to commend the measures and efforts undertaken by the President of the Tribunal to ensure the timely conclusion of all cases before the ICTY.

Today, as we are in the final stage of the ICTY's work, we should pay special attention to existing problems and challenges that the Tribunal continues to face, while acknowledging its well-known achievements in combating impunity and its contribution to international criminal justice and the rule of law.

First, I would like to raise the issue of cooperation with the Tribunal. According to article 29 of the ICTY statute, cooperation and judicial assistance is one of the preconditions for the successful fulfilment of the Tribunal's mandate. Unfortunately, for over 22 months, Serbia has failed to act to execute the Tribunal's arrest warrants for three Serbian indictees. In this regard, we would like to underline that there can be no justification for refraining from cooperation and we urge the Government of Serbia to return to the path of full compliance with its obligations.

The ICTY, the International Criminal Tribunal for Rwanda and other international criminal courts, including the International Criminal Court, were created to ensure global justice and responsibility for grave international crimes. With this in mind, we are particularly concerned about the recent trend to suspend or reduce cooperation with international criminal tribunals. We are also seeing instances of States deciding to withdraw from treaties they had previously signed. We regret these decisions and consider them to be a step back, undermining prevention efforts

and due prosecution of the most serious crimes. The international community must come together in its strong support for the work of the criminal tribunals in order to protect the right to justice of all victims of mass atrocities.

The second problematic issue noted by the President of ICTY is staff attrition. We are concerned about this problem and acknowledge the efforts the Office of the President and the Registrar to address it. Taking into consideration the potential exodus of highly experienced experts while the ICTY's mandate is approaching its end, we need lend our support to the proposals to strengthen the Tribunal's resources in order to address this administrative challenge.

On a different note, my delegation welcomes the project of holding a series of legacy and closing events under the rubric "ICTY legacy dialogues", which has been developed by the Tribunal to summarize best practices from over 20 years of its work and bolster transitional justice efforts in the region. We would also like to mention another positive effort aimed at gathering the Tribunal's knowledge and expertise in a single location by creating the first ICTY Information Centre, to be located in the Sarajevo City Hall in Bosnia and Herzegovina.

With respect to the Mechanism, my delegation commends its judicial activities and the issuance of more than 800 orders and decisions since its establishment, as well as the ongoing efforts of the Residual Mechanism to reduce costs and improve procedures and operations.

We welcome the active work of the Mechanism with respect to preparations to take over responsibilities for all remaining aspects of the ICTY's functions after its closure next year, including preservation of the archives. We cannot afford the luxury of forgetting the lessons of history that were learned at a staggering cost in human lives. Otherwise, joint efforts to prevent horrible crimes in future will be doomed to failure.

To conclude, I would like once again to stress the necessity of cooperation with international criminal tribunals to ensure their effective functioning.

We urge all States to cooperate with the ICTY and the Mechanism and to respect their mandates in full compliance with their obligations under the relevant Security Council resolutions.

Mr. Kandeel (Egypt) (*spoke in Arabic*): We have read the reports under consideration today (see S/2016/669, S/2016/670, S/2016/975 and S/2016/976) very attentively and wish to commend the progress made by the International Criminal Tribunal for Rwanda (ICTR) and the International Tribunal for the Former Yugoslavia (ICTY). We express our support for their continued efforts to complete their work within the established time frame.

We congratulate the President of the International Residual Mechanism for Criminal Tribunals following the opening of the headquarters of the Mechanism, in Arusha. We thank the Government of Tanzania for hosting the Mechanism.

The Security Council, in creating the two international criminal tribunals, reaffirmed the principles of justice and the rule of law and thereby demonstrated the commitment of the international community to dealing resolutely with war crimes and crimes against humanity; to ensuring accountability for the perpetrators of such crimes; and to enshrining the principle of the combat against impunity at the international level.

Both Tribunals have made tremendous and praiseworthy efforts in ensuring fair trials, the protection of witnesses and reparations for victims. The ICTR has completed its work; the ICTY will do so next year; and the Residual Mechanism, with its two headquarters, in The Hague and in Arusha, will take over the Tribunals' case files. In that respect, we welcome the transfer of power to the Residual Mechanism.

As we near the end of the ICTY's mandate, the Council must continue to help the Tribunal to complete its work as soon as possible. It is vital to arrive at effective solutions to the various challenges it faces in this respect, in particular making the most of the experience of the Tribunal's staff on the eve of the completion of its mandate.

The delegation of Egypt will continue to support the work of the Tribunal. In that respect, we reiterate the need to ensure the optimal use of the financial and administrative resources available so as to facilitate the work of the Residual Mechanism and the ICTY.

International criminal tribunals are an essential instrument created by the international community in order to guarantee and enshrine international law and to prosecute those responsible for serious violations of such law. That is why the experience gleaned in, and the lessons learned from, the work of both Tribunals

must be studied and recorded so that they can serve as a reference in future, so as to prevent similar problems. Indeed, the judicial legacy of the two Tribunals belongs to the international community as a whole. The United Nations and its Member States must take the steps necessary to preserve this legacy.

In conclusion, Egypt is following with great interest the issue of the detention of one of the Mechanism's judges in his country of origin following the levelling of accusations against him. We hope that current contacts between the President's secretariat with the authorities of that country will allow for the finding of a solution that makes it possible to preserve the dignity and independence of the international judiciary, in accordance with international law and the Charter of the United Nations charter.

Mr. Medina Mejías (Bolivarian Republic of Venezuela) (*spoke in Spanish*): We welcome and thank Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals; Judge Carmel Agius, President of the International Tribunal for the Former Yugoslavia; and Prosecutor Serge Brammertz for their semiannual briefings. We also thank the Office of Legal Affairs, in particular to Mr. Miguel de Serpa Soares and Mr. Stephen Mathias, for their work and for their timely dialogue.

We take this opportunity also to acknowledge the leadership of the delegation of Uruguay, Chair of the Informal Working Group on International Tribunals.

The Bolivarian Republic of Venezuela supports the efforts of the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals to bring to justice the perpetrators of crimes against humanity and war crimes, in violation of international humanitarian law and international human rights law. The work carried out by these bodies has reaffirmed the international community's commitment to combat impunity for such heinous crimes, so as to prevent their recurrence. These efforts help to bolster the rule the law at the international level by combating impunity and ensuring that justice is done for the victims.

With the finalization of the work of the ICTY and the transfer of its archives to the Residual Mechanism, we deem it necessary to enhance cooperation between the Mechanism and States in order to guarantee compliance with the mandate conferred upon it in resolution 1966 (2010). This relationship is vital to helping ensure that we achieve the projected goals, particularly in terms of the arrest of fugitives and compliance with the relevant judicial orders.

To that end, we welcome the cooperation between the Prosecutor's office and the authorities of Bosnia and Herzegovina, Serbia and Croatia during the reporting period, which represents a positive factor in bolstering the Tribunal's work in this transitional phase. Despite the various difficulties encountered in this undertaking, we urge a strengthening of the cooperative relations between those countries and this judicial forum.

Similarly, we believe that the support of other States and of international organizations is vital to a successful outcome in pending cases. To that end, we deem necessary to ensure access to documents, the relevant information and witnesses, as well as ensuring the protection of witnesses and their relocation, so as to facilitate the consolidation of the rule of law in the territory of the former Yugoslavia.

Our country also values the contributions of the Office of the Prosecutor in bolstering the national juridical institutions of the nations that formed part of that territory in terms of the prosecution of war crimes and their perpetrators.

We wish to highlight the efforts and dedication of the ICTY in working to conclude its functions within the established time frame, that is, by December 2017, in line with the strategy agreed in that respect. While the judges should carry out their duties with independence and impartiality, we are convinced that they must conduct judicial trials and deliver their sentences in a timely manner, in accordance with the universal principle of due process.

In that connection, we support and recognize the work and efforts of the President of the International Residual Mechanism for Criminal Tribunals and his team for the progress achieved and their effectiveness, economy and transparency. Moreover, we support the strategic plan adopted by the Residual Mechanism, consisting of stepping up efforts to find suitable places for the relocation of staff, thereby providing them with appropriate assistance, which will help to reduce overhead costs. We urge the Mechanism to maintain its pace of work as set out in its management report in order to ensure that there is a successful and smooth transition from the Tribunal.

Finally, we reiterate our support to the Tribunal for the Former Yugoslavia to continue taking the necessary steps to complete its work in an expeditious manner and ensure that all cases that are still being tried be concluded without delay in 2017, just as envisaged. Doing so will allow the international community to fulfil its commitment to the promote the rule of law and put an end to impunity.

Mr. Lucas (Angola): We are grateful to the honourable judges, Mr. Carmel Agius and Mr. Theodor Meron, and to Prosecutor Serge Brammertz for participating in today's meeting. We are equally grateful to Uruguay for its important work in chairing the Working Group on the International Tribunals. The insightful briefings provided by the judges and the Prosecutor are meaningful instances of the important work being performed by the International Tribunals, the establishment of which by the Security Council was a decisive initiative for preserving the ideals of international justice and ensuring the prevalence of justice over impunity. We fully support the work of the Tribunals, being aware that their legacy will leave a decisive imprint by strengthening international criminal justice.

We acknowledge the assessment by Judge Carmel Agius and Prosecutor Serge Brammertz on the significant progress achieved in concluding the work of the International Tribunal for the Former Yugoslavia (ICTY), the recommendation for the completion strategy and the delivery of its final verdicts before its closure by the end of 2017. We are, however, concerned about staff attrition in the ICTY. In our view, a viable solution, with support by Member States, should be found to counter that trend in order to allow the Tribunal to complete its mandate in a smooth and timely manner.

We recognize the efforts of the Tribunal to complete its work expeditiously, as well as the judges' efforts to identify the means to speed up pending cases. In that regard, we urge the Republic of Serbia to cooperate fully with the ICTY by handing over, without delay, the three individuals indicted whose arrest warrants have yet to be executed, in order to allow the Tribunal to finalize its work. We also call on other countries of the former Yugoslavia to cooperate with the Tribunal fully and in good faith.

Regarding the International Criminal Tribunal for Rwanda (ICTR), we stress the importance of States' cooperation with the International Residual Mechanism for Criminal Tribunals. As such, we call on the States concerned to investigate, arrest prosecute or extradite, in accordance with their applicable international obligations, all fugitives accused of genocide and crimes against humanity residing in their territories. We take note and commend the Mechanism cooperation with the countries of the former Yugoslavia and with Rwanda by keeping the authorities updated on its activities on the transition of responsibilities and in the provision of assistance to national jurisdictions. We acknowledge that the Mechanism continues to draw upon best practices and lessons learned from the ICTY and ICTR in pursuing ways to improve its operations, procedures and working methods and to maintain flexibility in its staff assignments in order to maximize effectiveness and efficiency.

We commend the construction and inauguration last November of the Mechanism's new premises in Arusha, with dedicated archives and facilities and allowing for the collocation of the ICTR Mechanism. As Judge Meron highlighted,

> "[it] stands not only as a symbol of accountability and the rule of law, but as a new model of and for international justice ... that must succeed if international justice and the fight to end impunity are themselves to succeed in the long run."

We equally welcome the appointment by the Secretary-General of Mr. Olufemi Elias as the new Registrar for the Mechanism.

It is with great concern that we learned of the arrest of Judge Aydin Sedaf Akay. We appeal to the Turkish Government for his release. His detention violates the principle of the independence of justice and the judges' privileges and immunities, thereby creating a feeling of uncertainty for other judges.

Finally, we would like to highlight that the tenets of international criminal justice embodied in the Criminal Tribunals for the Former Yugoslavia and Rwanda were crucial for the recovery processes following the appalling events that occurred in those territories. The establishment of the Tribunals as a response to the atrocities committed in the former Yugoslavia and in Rwanda were instrumental in preserving trust in international law and ensuring that those responsible for serious human rights violations and violations of international humanitarian law faced trial and were held accountable, that judicial mechanisms were put in place as a deterrent and a warning that such crimes would

not left unpunished and that redress to the victims was guaranteed. Ultimately, the Tribunals made a tangible contribution to the fight against impunity and the strengthening of international criminal law.

The President (*spoke in Spanish*): I shall now make a statement in my capacity as the representative of Spain.

First of all, I want to join the other members of the Council, and I believe that we are all together in this regard, in thanking the Ambassador and representative of Uruguay for the excellent work he has done and continues to do, together with his team, at the helm of the Informal Working Group on International Criminal Tribunals.

I would also like to commend the efforts of the International Criminal Tribunal for the Former Yugoslavia (ICTY), headed by Judge Agius, for adapting to the completion strategy. In fact, all of the sentences it has delivered this year have been within the established deadlines. Such work is praiseworthy given that the ICTY has achieved its goal despite the complex circumstances it has faced, especially due to staff attrition. We certainly trust in the capacity of the Tribunal to overcome such difficulties and complete its operations next year, according to plan. My country will support the extension of the mandates of the judges and the Prosecutor for the periods that have been requested.

The International Residual Mechanism for Criminal Tribunals that Judge Meron has been honourably leading for more than four years now has become a model institution for its ability to apply the lessons learned from previous experiences with a view to ensuring both effectiveness and transparency in the management of delivering justice at the highest level. Since that is of the utmost importance within a justice system, we trust that the Tribunal will continue to operate in that same manner.

Regarding the work of the International Criminal Tribunal for Rwanda (ICTR) and the ICTY, the smooth and efficient transitions to the Residual Mechanism are most noteworthy. It was not easy, but was achieved in the case of the Rwanda Tribunal, and it appears that the same will happen for the Tribunal for the Former Yugoslavia. The operations of both institutions seem to be satisfactory, but some concerning issues remain. Eight defendants of the Tribunal for Rwanda are still on the run, which is an unacceptable challenge to the law and an intolerable affront to the victims of the Tutsi genocide. We hope that the measures adopted by the Prosecution will bear fruit, and once again we call on States that may have information to make it available without delay.

No international tribunal can fulfil its mandate without the essential cooperation of States, which, let us not forget, is an obligation under international law. We must recall once again that Serbia must implement the orders of arrest issued by the Tribunal for the Former Yugoslavia, and return to the path of full compliance that it always followed in the past, whatever the nature of the proceeding.

One year after the closure of the Tribunal for the Former Yugoslavia, it is more important than ever that the countries of the region take over and continue with a true commitment to investigating and prosecuting pending war crimes caes, which remain insufficient in pace and number. A degree of political accountability and a continued effort to ensure respect for the rule of law are needed in order to educate new generations and promote true reconciliation based on acknowledgement of the facts, and in which there is no historical revisionism, denial of the facts and lawfully proven crimes, or glorification of perpetrators.

I conclude by reiterating the strong support of Spain for the work, first, of the Tribunals, and now of the Mechanism, which are evidence of the firm commitment of the international community to combating impunity. Their pioneering jurisprudence has opened up new paths in international law, and their work has given hope to many victims, not only in Rwanda and the former Yugoslavia, but around the world by demonstrating that, in spite of appearances, justice is possible when there is enough political resolve. It is now our responsibility to preserve the legacy of the Tribunals as testimony to the past, but also as proof of the strength of law and value of justice, and as a lesson to future generations so that the terrible events that led to their creation are never repeated.

I now resume my functions as President of the Council.

I give the floor to the representative of Bosnia and Herzegovina.

Mr. Vukašinović (Bosnia and Herzegovina): We too wish to extend our gratitude to the leadership of the International Tribunal on Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal

Tribunals for their respective reports and today's detailed briefings on the progress of legal proceedings, the completion strategy implementation and the transfer of the Tribunal's functions to the Mechanism.

We are entering a final chapter in the work of the ICTY. It is a culmination of all the efforts to bring to justice those responsible for the horrific crimes committed in the former Yugoslavia. Our continued strong support is therefore as important as ever. Furthermore, their legacy is important for the future of international criminal justice. We note the continued progress and steady work of the ICTY in its last reporting period. We further acknowledge in that regard the Tribunal's commitment to completing its work expeditiously by a targeted date, the judges' efforts in identifying further measures to expedite the pending cases, and the overall effort to ensure the smooth transfer of functions to the Residual Mechanism, in accordance with resolution 1966 (2010). We encourage the Tribunal to make every effort to meet the targets of its completion strategy and forecast delivery dates of judgements in order to avoid any further delays.

During all this time, the cooperation of Bosnia and Herzegovina with the ICTY has remained steadfast and full, and will continue as such with the Mechanism. Since the very beginning, Bosnia and Herzegovina has fully cooperated with the ICTY and implemented all its decisions and rulings. Our support for the work of the ICTY demonstrates our commitment to the rule of law and sustainable peace.

The expiration date for the pursuit of justice will not arrive in 2017, nor is the delivery of justice solely dependent on the remaining work of the Mechanism. Further accountability depends also on the efforts of national judicial systems in the region, as well as on their mutual, successful and strong cooperation. Bosnia and Herzegovina remains committed to further strengthening its national judicial system at all levels in order to bring to justice the persons responsible for atrocity crimes. We have adopted a justice sector reform strategy for the period 2014-2018 that will contribute to the long-term reinforcement of the rule of law and further consolidate the judicial system, including measures to improve judicial independence and efficiency.

At the same time, the implementation of the national war crimes strategy continues to improve the consistency of juridical practices throughout the entire country at all levels. The implementation of the strategy is a complex process in which many institutions of Bosnia and Herzegovina participate at all levels of authority. Despite numerous challenges, important results have been accomplished. That is reflected in a steady increase in the efficiency of prosecutions of war crimes cases and certain progress in resolving outstanding Category II cases, as well as in issuing important indictments. In that regard, we welcome in particular the support of the European Union for the implementation of the strategy, and the support of the Organization for Security and Cooperation in Europe and the United Nations Development Programme, principally in connection with witness protection activities and the appropriate assistance and support to victims.

We are also pleased that the European Union has agreed to extend the joint European Union-ICTY Training Project for National Prosecutors and Young Professionals from the former Yugoslavia, as it has played a very important role in building the capacities of national justice sectors for the past eight years in order to ensure an efficient transition from the ICTY to national war crimes prosecutions.

We also remain committed to the promotion of stronger and more coordinated regional cooperation as the best possible continuation of the work of the Tribunal and the preservation of its legacy. In the joint efforts to deliver justice for numerous victims of our region lies the true strength of reconciliation, while in their remembrance and testimony lie a lesson and a reminder for future generations.

We welcome the continued activities carried out by the Residual Mechanism in the reporting period in increasingly assuming its designated responsibilities, and hope that the Mechanism will draw and build upon the best practices of the ICTY and the International Criminal Tribunal for Rwanda in order to fulfil its mandate.

The closure of the ICTY does not imply the end of my country's fight against impunity. Fighting impunity in a complex, multinational State is a prerequisite for achieving national reconciliation and long-term stability in the country and the region. In that regard, processing war crimes, regardless of the national or religious origin of the perpetrators and victims, is of crucial importance to achieving our goals of building a

peaceful and prosperous Bosnia and Herzegovina that is fully integrated into the European Union.

The President (*spoke in Spanish*): I now give the floor to the representative of Rwanda.

Mrs. Rugwabiza (Rwanda): At the outset, let me congratulate the delegation of Spain on its assumption of the presidency of the Security Council for this month. Let me also congratulate the delegation of Senegal for the exceptional work done during its presidency in the month of November.

I thank Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals; Judge Carmel Agius, President of the International Criminal Tribunal for the Former Yugoslavia; and Serge Brammertz, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia and Prosecutor of the International Residual Mechanism for Criminal Tribunals. I also thank all previous speakers.

As we reflect on the activities of the Residual Mechanism for International Tribunals, let me reiterate our belief that, despite serious shortcomings, the International Criminal Tribunal for Rwanda (ICTR) produced a substantial body of jurisprudence, including definitions of the crime of genocide, crimes against humanity, war crimes and rape as a weapon at war, as well as forms of responsibility, such as superior responsibility.

The Court also went further to conclude, in its judicial notice on 2 September 1998, that genocide was indeed committed in Rwanda against the Tutsi as a group, and, on 16 June 2006, the Appeals Chamber issued a judicial notice that it was "a fact of common knowledge" that "between 6 April and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group", and the Appeals Chamber also issued a judicial notice that

> "there is no reasonable basis for anyone to dispute that, during 1994, there was a campaign of mass killings intended to destroy, in whole or at least in very large part, Rwanda's Tutsi population".

We believe that those were legal doctrines and tests for assessing components of the crime of genocide, including the prosecution of 93 individuals, mainly the masterminds. That stood as an important contribution to the pursuit of justice after genocide, to reconciliation and to healing in my country, Rwanda.

Despite that, however, let me express our concern about ongoing attempts by perpetrators of genocide and their henchmen to deny the occurrence of the 1994 genocide committed against the Tutsi in the names of scholars, the media and politicians, and to distort facts and attempt to rewrite history. As such actions continue to be an ugly shared reality, we call upon States Members of the United Nations, individuals, institutions and the broader international community to denounce, in no uncertain terms, such attempts to deny or trivialize acts of genocide, or to minimize its scale. We not only call on Member States and all concerned to denounce those actions, we also exhort them to call to account all those who indulge or support the denial of genocide or revisions of genocides.

It is also regrettable that none of the remaining ICTR indicted fugitives have been arrested in the past five years, in addition to other suspects against whom there is ample and quite indisputable evidence. We once again call on Member States, especially those harbouring genocide fugitives, to honour their obligations to the Charter of the United Nations and the Convention on the Prevention and Punishment of the Crime of Genocide to arrest, and place all suspects on trial, in accordance with the relevant Security Council resolutions, or extradite them to where they can be tried, including in Rwanda. Anything short of that raises serious questions as to the credibility of Member States' stated commitment to international justice. We are equally concerned by the worrying pattern of early releases of convicted genocide masterminds. The observed pattern of reducing the sentences of genocide convicts on appeal is quite alarming.

We commend recent efforts by the Government of Canada, the Kingdom of the Netherlands and the United States Government for recent arrests and extraditions to Rwanda, and hope that more countries will do so in respect of genocide suspects residing in their territories. We also welcome the prosecution and subsequent convictions of Octavien Ngenzi and Tito Barahira in the Cour d'assises in Paris, as well as the recent confirmation through appeal of the sentence of Pascal Simbikangwa.

We regret that the status of progress in monitoring of cases referred to national courts outside Rwanda remains quite disappointing, while the procedures in two cases referred to Rwanda in 2012 and 2013 are well advanced. Last year, we noted with concern the decision by the French prosecution to drop charges against

Wenceslas Munyeshyaka, a decision that contradicts the nature and scale of the crimes committed in the light of available evidence.

The crime of genocide is imprescriptible — we will not cease to repeat that point. Rwanda will continue to legally pursue and seek answers from individuals, institutions and Governments for the allegations of acts of omission or commission, without which the genocide could have either been prevented, or deterred expeditiously, or, at the very least, we expect the Member States to refuse to grant safe havens to perpetrators of genocide.

Allow me to come back to an issue that is important to my Government, that of the ICTR archives. While we have, on many occasions and at different levels, expressed our view on the issue of the archives and on the urgent need for them to be relocated to Rwanda, while remaining the property of the United Nations, we are concerned by the lack of engagement by stakeholders, as well as the unilateral decision to store the genocide archives in a specific location without involving Rwanda. In that regard, I wish to state that the fate of those important pieces of our history cannot be decided merely on the basis of budgetary, logistical or administrative considerations.

Rwanda also wishes to clarify to the Security Council, and put on record, that a significant part of those documents, which comprise today's ICTR archives, were obtained from Rwanda and were released only to provide evidence in court, not for possession. They are yet to be returned to Rwanda.

The ICTR archives are the most comprehensive account of the 1994 genocide against the Tutsis, a piece of history that my country will not stop demanding to have restored to it — for the genocide happened in Rwanda, not on the moon, and that is where that part of our history belongs. Should any party have problems with our request, which is legitimate, we are open to engaging in a candid conversation. That is what we are asking for in order to address our outstanding demand.

In conclusion, let me assure everyone here of my country's unwavering commitment to work with all Member States and with the United Nations to bring to justice all perpetrators, deniers or revisionists of the genocide against the Tutsi who are still at large.

The President (*spoke in Spanish*): I give the floor to the representative of Croatia.

Mr. Drobnjak (Croatia): Allow me first to welcome the Presidents of the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals, Judges Agius and Meron, as well as Prosecutor Brammertz. I thank them for today's briefings and reports, and reassure them again of Croatia's full support for their continuous efforts to ensure accountability and promote the fight against impunity.

Last month we marked the sorrowful twenty-fifth anniversary of the tragedy of the Croatian city of Vukovar. This is no ordinary event for Croatia; on the contrary, the tragedy of Vukovar has a special place in our history and our memory, so I pay a tribute to Vukovar by starting my speech today in this way. Besieged for three long months in 1991, that once prosperous baroque city on the Danube was leveled to the ground with 6.5 million projectiles. Finally, on 18 November 1991, the city fell into the hands of its invading oppressors.

Today, 938 white crosses in the Vukovar cemetery recall some of the victims — those exhumed from mass graves in and around the city. This includes the site at Ovčara, where some 270 sick and wounded were taken from the Vukovar hospital and brutally executed. The crosses also stand as a reminder of the 86 children killed during the siege, the youngest being a six-month-old infant. Some 291 persons from Vukovar are still missing.

For the horror of Vukovar, which at the time was the largest massacre in Europe after the Second World War, the ICTY convicted two persons. One has died in the meantime; the other was sentenced to 10 years in prison and released early. Such a misbalance between the magnitude of crime and the smallness of justice served is something we shall always have in mind while making the final, historical evaluation of the Tribunal.

Throughout the years, Croatia has spoken extensively in this Chamber on the subject at hand. Our position regarding the ICTY is well known. So while we face the Tribunal's final chapter in its 23 years of existence, let me just add the following.

It is important to note that regional cooperation in criminal matters is evolving not in a vacuum, but against the backdrop of conditions so clearly described in the reports before us. These circumstances must change; they must improve in order to fully pave the way for the advanced regional cooperation that we long

for. Any assessment of this complex field must take that into account.

The judiciary in some parts of the region, while still struggling with inherent deficiencies, appears also to be increasingly subject to unwarranted interference as regards the prosecution of war crimes. For instance, in Bosnia and Herzegovina we note with concern inconsistencies in the prosecutorial approach, depending on the nationality of the accused, thus resulting in different laws and legal institutions being involved in war crimes prosecutions against individuals belonging to the different constituent nations in that country.

We emphasize the need to establish a consistency of jurisprudence across the country and to achieve better harmonization of case law in criminal matters. In parallel, the level of expertise needs to be improved in order to ensure international and European standards in the prosecution of war crimes, as well as consistency in the evidentiary and legal characterization of cases. We emphasize once again the utmost importance of refraining from any form of manipulation or bias in investigation and prosecution processes. The work of the judiciary must remain impartial and independent, outside and above daily politics. That goes both for cases transferred by ICTY to national courts and to those initiated by domestic prosecutors.

Croatia, as a State member of the European Union (EU) whose judicial system was under intense scrutiny during its successful accession to the EU and with an established record of accomplishment in prosecuting war crimes, stands ready to assist its neighbours in that regard. Croatia will not be deterred in its staunch support for the European and Euro-Atlantic perspective of the region, in particular that of Bosnia and Herzegovina, as the best impetus for the strengthening its institutions and the independence of its judiciary, as well as for guaranteeing the equality of its constituent peoples.

Let me reiterate again that full cooperation with ICTY must be ensured and that both the Tribunal and the Mechanism must receive all necessary support to complete their mandates on time. Croatia is carefully following all remaining cases before the ICTY and the Mechanism and expects their efficient and swift conclusion. While ICTY has irreversibly shaped contemporary international criminal justice and the world's attitude towards impunity, let us not forget that the work is not done yet and that countless victims are still waiting for justice to be served. In this regard, the final chapter in the work of the Tribunal and the Mechanism must also live up to expectations, in particular with regard to the scrupulous interpretation and appropriate implementation of international humanitarian and human rights law.

Finally, Croatia is considering with interest the proposal developed within the Tribunal for a series of legacy and closing events. We are ready to take part in these events, share our experiences and engage in discussions on how best to ensure its lasting legacy.

The President (*spoke in Spanish*): I now give the floor to the representative of Serbia.

Mr. Backović (Serbia): I thank you, Sir, for the opportunity to speak to the Council for the first time as representative of the Republic of Serbia. Let me welcome the Presidents and the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals. I thank them for their semi-annual reports.

The fight against impunity for serious international crimes is a milestone for the principle of the rule of law at the international level. The unambiguous willingness of States to cooperate with ICTY regarding all acts that the Security Council recognizes in Tribunal's statute as serious international crimes should be viewed as a contribution to that fight. Serbia's contribution in that regard is best evidenced by the statistics on its cooperation with the ICTY. Parallel to that cooperation, the authorities of my country continue to fight impunity for core international crimes through proceedings before national courts.

The Republic of Serbia has handed over 45 defendants to the Tribunal out of the total of 46 whose surrender had been demanded from Serbia. One defendant committed suicide before he could be handed over to the Tribunal. Of that number, 14 defendants were arrested in the Republic of Serbia; 4 defendants were arrested abroad within the framework of cooperation between national security services with foreign agencies; and 27 defendants voluntarily surrendered.

Serbia also gave ICTY Prosecutors free access to important evidence located in Serbia, such as documents, archives and witnesses. So far, Serbia has positively resolved 2,151 out of 2,172 requests for assistance received from the Office of the ICTY Prosecutor, and 7 requests for assistance from the Office of the Mechanims Prosecutor. Serbia has allowed

757 witnesses to testify freely despite their right and/or obligation to withhold testimony due to State, military or official secrets. Various defence teams issued 1,332 requests, and no pending requests for assistance or disputes in that regard have been recorded. Serbia carried out all 11 requests for witness protection. It is also important to note that Government agencies successfully monitored all the provisional release cases and ensured that all the accused were returned to detention at the ICTY's request. The Serbian authorities are currently monitoring two provisional release cases.

In addition to cooperating with the ICTY, Serbia remains committed to improving the efficiency of domestic war crime proceedings, as evidenced by the obligations that Serbia has undertaken in accordance with its action plan under chapter 23 of its national strategy for the prosecution of war crimes, adopted by the Serbian Government earlier this year, as well as by the fact that eight indictments for war crimes against 15 individuals have been confirmed in Serbia in 2016.

Accountability for core international crimes, regardless of the national, ethnic or religious status of the perpetrators and victims, as well as reconciliation and cooperation in the region, continue to be priorities for Serbia. However, it is important to note that not all of those goals can be attained by Serbia acting unilaterally; for that, regional cooperation is necessary. Serbia is committed to improving that cooperation, and of course a similar commitment on the part of other countries in the region is needed, too.

We are aware that the fact that a new war crimes prosecutor has not been elected has caused some delays in implementing the strategy in Serbia, but I am pleased to inform the Council that the new election process has almost been completed. It must be carried out in accordance with our Constitution and the relevant laws, and with full respect for the autonomy of the public prosecutor's office and the independence and democratic proceedings of the National Assembly. None of those authorities should be exposed to any pressure or inappropriate internal or external influences when deciding on candidates for the position of war crimes prosecutor. However, the war crimes prosecutor's office has been performing its duties diligently, as the number of confirmed indictments testifies. That is also in line with Serbia's commitment to strengthening its institutions, regardless of who the leaders of those institutions are.

Despite the clear legal arguments to the contrary, there is still criticism concerning the case of the *Prosecutor v. Jojić et al.* case in the new report of the Tribunal (S/2016/670). According to arrest warrants issued by the ICTY Trial Chamber in a case of contempt of court, Serbia is once again facing accusations of the non-extradition of three individuals, Petar Jojić, Vjerica Radeta and Jovo Ostojić. In that regard, I would like to remind the Council of the decision of the Belgrade High Court issued on 18 May, which stated that in this case the legal conditions for executing the Tribunal's warrants were not met, because our law on cooperating with the ICTY stipulates that legal grounds for executing ICTY arrest warrants are provided only by indictments for core statutory crimes — such as grave breaches of the Geneva Conventions of 1949; violations of the laws or customs of war; genocide, and so forth — as opposed to indictments for contempt of court. Naturally, the Serbian law on cooperation with the ICTY closely follows the provisions of the ICTY Statute.

By its adoption and full implementation of its law on cooperation with the ICTY, Serbia has proved its commitment to prosecuting all the crimes that the Security Council has listed in the ICTY statute. Under Serbia's Constitution, our courts operate autonomously and independently, and pass judgement in accordance with the Constitution, the country's laws and the generally accepted rules of international law and other ratified international treaties.

Serbia has never failed to execute an ICTY arrest warrant based on the ICTY statute and the generally accepted rules of international law. The Belgrade High Court decision does not preclude similar future cooperation. However, there is no legal basis for the extradition in this case. The French authorities applied an identical provision of French law to an identical situation in refusing extradition in the case of Florence Hartmann. That decision was not reported to the Security Council as improper in any way. To sum up, the statute simply does not provide for the surrender of indictees accused of being in contempt of court. That is not written in the statute. Presumably, if the Council had intended that indictment for crimes other than serious crimes could serve as a basis for extradition, it would have written that into the statute. Article 29, as mentioned, does not provide for that, and I invite the Council to take a look at it. Nor does any other provision in the statute. That interpretation does not succeed, and probably would not succeed under the domestic laws of

the countries of most of the members of the Council. It is very possible that the Council's intention of providing for the Tribunal's prosecution and personal jurisdiction only of serious crimes has to do with the resources that the Council was able to dedicate to it at the time.

The second point that I would like to make has to do with the confirmation of the judgement in the case of Mr. Đukić. That judgement was rendered by the authorities in Bosnia and Herzegovina, and since Mr. Đukić is now in Serbia and Belgrade, the judgement has to be confirmed. The confirmation process has so far taken a year. Six hearings were held at which Mr. Đukić did not appear, owing to health problems, for which he presented doctor's notes as evidence. As a result, the judge has ordered his health to be assessed by an expert witness to decide whether he is well enough to be present at the confirmation hearing. Serbia has not refused or failed to confirm the judgement. I do not believe that the period of a year that has elapsed so far, compared with the length of time that the Tribunal has taken in some cases, is excessive. There is therefore no reason to point to this case with any criticism. Needless to say, Serbia is committed to respecting all of its international and bilateral agreements in that regard.

In conclusion, I would like to point out that Serbia's cooperation with the ICTY has been second to none. Serbia remains committed to contributing actively to the Tribunal's efforts to accomplish its mission, as well as to effectively prosecuting war crimes before its domestic courts. That is the only way we can achieve justice for the victims, regardless of their national, ethnic or religious origin. We will continue to strive for reconciliation, cooperation and stability in the region. The citizens of all the former Yugoslav republics deserve it.

The meeting rose at 12.40 p.m.